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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|---------------------|------------------|
| 10/774,782 | 02/09/2004 | Edmund T. Kochling | 81703A | 8851 |
| 7590 | 01/26/2005 | | EXAMINER | |
| KRIEGSMAN & KRIEGSMAN | | | SAFAVI, MICHAEL | |
| 665 Franklin Street | | | ART UNIT | PAPER NUMBER |
| Framingham, MA 01702 | | | 3673 | |
| DATE MAILED: 01/26/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

P.W.

| | | |
|------------------------------|-----------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/774,782 | KOCHLING, EDMUND T. |
| | Examiner | Art Unit |
| | M. Safavi | 3673 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 November 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,4,6-30 and 32-40 is/are pending in the application.

4a) Of the above claim(s) 10,20-24,28-30 and 32-40 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,2,4,6-9,11-19 and 25-27 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on February 09, 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/09/04.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 2, 4, 6-9, 11-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification had not originally presented a ramp "having a groove defining...an integrally formed sloped ramp portion" nor "provided with a groove to define a groove and a sloped embankment" as now appears in each of claims 1, 17 and 18.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to what is being defined by "said recessed area is sized to reduce the weight of said pre-cast curbside access ramp by approximately 500 lbs." The weight of any article would depend upon the material with which the article is formed.

Therefore, it is not understood as to how any recessed area "is sized to reduce the weight of said pre-cast curbside access ramp by approximately 500 lbs."

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Loov.

As for claims 25,26, and 27, Loov discloses, Fig. 1, a curbside access ramp 2 shown having a top and bottom with the top being sloped, (at region just above 3), from front to rear and with the bottom having a recessed area, Figs. 2 and 5. An integrally formed curb portion is at 3. Any portion of the left side or the right side may be provided with a longitudinally extending key-way, col. 6, lines 21-30. Bottom slots capable of receiving straps can be seen in Figs. 2-5, (slots extending between the support portions 18, 21, 22, 24, 25, etc.). As for claims 25, 26, 41 and 44, Loov discloses, Fig. 1, a curbside access ramp 2/5/6 or 2a/5a/6a shaped to include a formed curb portion 3 which curb portion can be seen having a central region with upwardly sloping side regions. A central ramp region, (of 2, 2), can be seen behind the curb portion and sloping back therefrom with side ramp regions 7, 8 on either side sloping seamlessly from the central ramp region. The bottom of the curbside access ramp is provided with a recessed area, Fig. 5. Any portion of the left side or the right side may be provided with a longitudinally extending key-way, col. 6, lines 21-30. Bottom slots capable of receiving straps can be seen in Figs. 2-5, (slots extending between the support portions 18, 21, 22, 24, 25, etc.).

Claims 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fennessy, Sr.

Fennessy, Sr. discloses, Fig. 5, a curbside access ramp shaped to include a formed curb portion, (including groove, indent, slot, recess, etc. to delineate the curb portion 22 from the ramp portion 24). A sloped embankment is included with a middle

portion of the curb set flush with the roadway. The access ramp assembly is of a configuration having a central ramp region 24 and a pair of side ramp regions sloping seamlessly from the central ramp region with the central ramp region sloping from an integrally formed curb portion 22 which curb portion includes a central region and side regions disposed on opposite ends of the central region while sloping gradually upwardly from the curb central region. Colored, textured identifying markers are at 26, including along opposite ends of a middle portion of the curb, identifying the location of the middle portion of the curb.

Claims 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ivey.

Ivey discloses block or curbing 10 having recessed bottom area 12 with steel reinforcement at 14. Sloped top is along side opposite bottom side 10 with slope defined by r.

"[T]he lack of physical description in a product-by-process claim makes determination of the patentability of the claim more difficult, since in spite of the fact that the claim may recite only process limitations, it is the patentability of the product claimed and not of the recited process steps which must be established. We are therefore of the opinion that when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternatively on either section 102 or section 103 of the

statute is eminently fair and acceptable. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." *In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972)

"The Patent Office bears a lesser burden of proof in making out a case of *prima facie* obviousness for product-by-process claims because of their peculiar nature" than when a product is claimed in the conventional fashion. *In re Fessmann*, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983).

Claim Rejections - 35 USC § 103

Claims 1, 4, 6, 7, 9, 11, 17, 18, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fennessy, Sr. in view of either of Ivey or Loov and further in view of either of Lowe or Schmanski.

Arguments to Fennessy, Sr. can be found above. Each of Ivey and Loov teaches formation of a curbside module possessing a bottom having a recessed area while each of Lowe and Schmanski teach application of a groove, indent, slot, recess, etc. so as to delineate the central ramp region of the respective curbside access ramp from the curb

portion as is well known in the paving industry, (i.e., sidewalk sections are delineated or separated from the curb section via a groove, indent, slot, recess, etc.). To have formed the Fennessy, Sr. access ramp section 22/24 with a lower recessed area, thus serving to produce a section of pavement with as little material as practical, as well as provide the Fennessy, Sr. access ramp with any of a groove, indent, slot, recess, etc., so as to delineate the central ramp region of the respective curbside access ramp from the curb portion as is well known in the paving industry, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by either of Ivey and Loov while further in view of either of Lowe and Schmanski. Loov particularly teaches formation of bottom slots capable of receiving straps as can be seen in Figs. 2-5, (slots extending between the support portions 18, 21, 22, 24, 25, etc.). Therefore, formation of such slots within Fennessy, Sr. while forming the lowered recessed area, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Loov.

As for claim 4, forming the resulting Fennessy, Sr. curbside access ramp 22/24 of a size and material so as to "reduce the weight of...[the] curbside access ramp by approximately 500 lbs.", thus creating a ramp of any sufficient size and durability, would have constituted a further obvious expedient to one of ordinary skill in the art.

As for claim 7, forming the resulting Fennessy, Sr. ramp 22/24 with the central ramp region sloping from the curb portion 22 to the rear having a maximum slope of no greater than 1:12 and with the side ramp regions, (either sloping side of 24), sloping from the central ramp region to the respective rear left side and rear right side having a

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maximum slope of no greater than 1:10, thus allowing for a smooth transition between road surface and sidewalk, would have constituted a further obvious expedient to one of ordinary skill in the art.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fennessy, Sr. in view of either of Ivey or Loov and further in view of either of Lowe or Schmanski as applied to claims 1, 4, 6, 7, 9, 11, 17, 18, and 25-27 above, and further in view of Daigle or Ivey.

Each of Daigle and Ivey teach application of steel reinforcement within a curbing/pavement structure with Ivey teaching steel reinforcement at 14 and Daigle teaching steel reinforcement at col. 1, lines 22-24. To have provided the modified Fennessy, Sr. pavement structure 22/24 including ramp 22 with steel reinforcing means, thus producing a substantially reinforced arrangement, would have constituted an obvious expedient to one of ordinary skill in the art as taught by either of Daigle and Ivey.

Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fennessy, Sr. in view of either of Ivey or Loov and further in view of either of Lowe or Schmanski as applied to claims 1, 4, 6, 7, 9, 11, 17, 18, and 25-27 above, and further in view of Barrett.

Barrett discloses utilization of identifying markers 40 along any extent of a curb construction. To have provided the modified Fennessy, Sr. pavement structure 2 or

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2/5/6 with identifying markers along any extent of the curb portion 3 including at either end of a central region f the curb portion, thus providing indicating means for any of various purposes such as utility locator, address locator, access area locator, etc., would have constituted an obvious expedient to one of ordinary skill in the art as taught by Barrett.

Claims 8 and 12-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2481. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354

M. Safavi
January 15, 2005